

APPLICANT:
Theodore & Monica Ryder

REQUEST: Variances to allow an accessory structure without a principal use and modification of Condition No. 6 in Case No. 4403, to allow a structure within 75 feet of shore

HEARING DATE: February 25, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5388

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Theodore & Monica Ryder

LOCATION: 419 Shore Drive – Joppatowne / Taylor's Point
Tax Map: 69 / Grid: 1A / Parcel: 268 / Lot: 8
First Election District

ZONING: R3 / R4 / I.D.A.

REQUEST: Variance pursuant to Sections 267-26A and 267-26C(2) of the Harford County Code, to allow an accessory structure and use on a lot without a principal permitted use.; and modification of Condition No.6 in Case No. 4403, to allow a structure to be located within 75 feet of the shore. in a R3/R4 District .

TESTIMONY AND EVIDENCE OF RECORD:

First for the Applicant testified Tory Pierce of Frederick Ward Associates, Inc. offered and accepted as a civil engineer and expert land planner. Mr. Pierce and his firm are familiar with the subject property and with Taylor's Point Subdivision, having done engineering work there since 1997.

Mr. Pierce described the Ryder properties. Mr. Ryder and his family own and reside on Lot 9. They also own adjoining Lot 8 which is vacant except for the gazebo which is the subject matter of this request. Mr. Pierce described Lot 8 as being surrounded by water on most of three sides, is above average in size for the subdivision, and shares a panhandle with three other lots. Lot 8 also contains approximately one-quarter acre of wetlands, and is split zoned between R3 and R4. He believes this is the only such split zone lot in Taylor's Point. Much of the property is encumbered by a 100 foot critical area buffer. The property also contains approximately 20,000 square foot wetland mitigation area. Mr. Pierce believes this is the only lot in Taylor's Point which has a similar mitigation area. It was designed to benefit all of the Taylor's Point subdivision.

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For all of the above reasons Mr. Pierce opined that the subject property was unique.

Mr. Pierce testified that he and his firm had been retained to evaluate the impact of the gazebo on Lot 8 and adjoining properties. As a result, Mr. Pierce had prepared and submitted a report, set forth in Applicant's Exhibit No. 7, which is a letter dated February 23, 2004. That letter/report indicates that Lot 8 is essentially a grass covered, vacant lot with a gazebo surrounded by a circle of landscaping. The letter reported, in summary, that the existing gazebo, "roughly 10 feet in diameter", amounts to 80 square feet, or only 2.1% of the allowable impervious area for the lot. Mr. Pierce also testified that the gazebo consumes space equal to about .3% of the area taken up by the 75 foot critical area buffer, in which the gazebo is now located.

Mr. Pierce concluded his testimony by giving his professional opinion that no adverse impact would occur to the Chesapeake Bay Critical Area if the requested variance were granted. Furthermore, Mr. Pierce testified that the gazebo would have no detrimental impact on any adjacent lot. Mr. Pierce also referred to a letter submitted by the Applicant as Applicant's Exhibit No. 8 from the State of Maryland, Critical Area Commission. That letter, dated January 30, 2004 did not oppose the variance request, provided that the "... County determines that reasonable accommodations are necessary for this applicant ..."

Next testified Theodore Ryder. Mr. Ryder stated that he has owned Lots 8 and 9 for about 4 years. He stated that the gazebo was placed with the 75 foot buffer area because of his daughter's vision. His daughter is legally blind. She needs to see things five times larger and five times closer to see things as would a person with unimpaired sight.

Mr. Ryder has testified that his daughter has had this condition since birth. She is able to move around only in a motorized wheel chair. She is eighteen (18) years old, able to read at approximately a second grade level, and functions at a 7 to 10 year old level. She can speak although her speech is distorted. She requires 24 hour care.

Mr. Ryder and his wife built their home around their daughter's needs. One of the improvements to the property is a gazebo. It was built for his daughter, to enable her to get close enough to see and enjoy the water. If located on Lot 9, the gazebo would not have had the same access because of the improvements which have been constructed on Lot 9, including a pool, fence and boat dock..

Mr. Ryder testified his daughter enjoyed the gazebo. She was able to see wildlife and enjoy the seasons. If moved back another 25 feet, she would not have the same ability to see and enjoy the water and the activity on and near the water. She would detect motion, but not in as much detail. Furthermore, if located on Lot 9, his daughter would be forced to navigate around the existing improvements on Lot 9 in order to get to the gazebo. This is difficult for her. Locating the gazebo on Lot 8 gives his daughter an easy approach, and easy access to the gazebo.

Mr. Ryder believed the request, if granted, would have no adverse impact on his community. The gazebo, in Mr. Ryder's opinion, is not visible to any part of his community.

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The Applicant then called Jim Ratliff, 429 Shore Drive, Lot 5, Taylor's Point subdivision. Mr. Ratliff indicated that he has lived in the subdivision since approximately August 2000. He was also appearing as a representative of the homeowners association. He stated the Taylor's Point Homeowners Association was very familiar with the request and neither the homeowners association or any of its members have any objections to it.

Next testified Anthony McClune of the Harford County Department of Planning and Zoning. Mr. McClune indicated that the Department's initial Staff Report of December 24, 2003 recommended against the proposed use. Since that time, the Department received additional information, particularly including the Critical Area Commission letter of January 30, 2004. Based upon that letter, the Department has changed its position and does not oppose the requested variance and modification. Mr. McClune recommended the following conditions:

1. That the use be limited to the Applicants and the variance and modification, if granted, cease when the property is transferred or if the use is no longer necessary.
2. That appropriate vegetative screening be installed around the gazebo, to be approved by the Harford County Department of Planning and Zoning.

No individual testified in opposition to the proposed request.

APPLICABLE LAW:

The Applicants are requesting a modification of Condition No.6 in Board of Appeals Case No. 4403, to allow a structure within the 75 foot critical area buffer of the shore – 50' is requested. That Condition states:

“Within 75 feet of the shore, no impervious surfaces or structures be installed or constructed during or after construction of the development with the exception of pier access paths and the piers.”

The Applicants are also requesting a variance to Sections 267-26A and 267-26D(2) which prohibits an accessory structure and use on a lot without a principal permitted use.

Section 267-26A of the Harford County Codes states:

“Generally. Except as otherwise restricted by this Part 1, customary accessory structures and uses shall be permitted in any district in connection with the principal permitted use within such district. Private roads and driveways shall be permitted in any district as an accessory use to any principal use when located in the same district as the principal use.”

Section 267-26C(2) of the Harford County Code states:

“No accessory use or structure shall be established on any lot prior to substantial completion of the construction of the principal structure.”

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The variance section is Section 267-11 as follows:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Board of Appeals Case No. 4403 was decided in 1994. That case addressed six proposed lots in the Taylor’s Point subdivision. One of the conditions of the ultimately favorable decision was that there be no impervious services or structures installed within 75 feet of the shore. That requirement applied to all of the lots which were subject to that application.

The Applicants now request modification of Condition No. 6 so as to enable the Applicants to continue to maintain a relatively small, screened-in gazebo 50 feet from the shore. This would, accordingly, encroach upon the buffer by 25 feet.

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The testimony of Mr. Pierce was that the gazebo would have no impact on any natural feature, nor any adverse impact on adjoining properties or property values. The gazebo takes up an almost negligible surface area compared to the size of the lot and the existing buffer. There is no other structure on Lot 8 and there is no other impervious surface with the exception of a small path to the gazebo. The photographs attached to the Department of Planning and Zoning Staff Report clearly show the nature of the lots, the location of the gazebo, and the open areas surrounding it.

The Hearing Examiner has reviewed Board of Appeals Case No. 4403 and has found that, with appropriate conditions, the granting of the modification of Condition No.6 will have no impact upon the substance or holding of that earlier decision. It is also further found there would be no adverse impact to any adjoining properties, to any adjoining property value, or to the existing critical area. In support of this finding is the January 30, 2004 letter from the Critical Area Commission.

The Applicants further request a variance to certain sections of the Harford County Zoning Code which generally prohibit accessory structures or uses on lots in the absence of a principal permitted structure or use.

However, the Applicants have presented an extremely narrowly framed and unusual request. Lot 8 will be encumbered by a relatively small gazebo which is in itself a temporary structure. The sole purpose of the gazebo is to enable their disabled adult child to enjoy her surroundings in a way which is as close to that as a non-impaired individual as possible. The Applicants have agreed to remove the gazebo at such time as any expanded use is made of the lot.

Accordingly, the Hearing Examiner relies upon the definition of “Use, principal” of the Code which is as follows: “The primary or predominant use of any lot.” Clearly, not only is the gazebo the primary or predominant use of Lot 8. It is the only use.

The gazebo is accessory to no other use on the lot, and it is neither incidental or subordinate to any principal use of the land or a building. Indeed, there is no other principal use of the lot.

For the above reasons it is found that the gazebo erected on Lot 8 is the primary, and, in fact, the only use of Lot 8. It is, therefore, not an accessory use, but rather the principal use of the lot. The variance requested is, accordingly, not necessary.

CONCLUSION:

It is accordingly recommended:

1. That the gazebo is found to be the principal use of Lot 8, provided that it be removed at such time as a dwelling or other principal use is made of the lot. Accordingly, no variance is necessary.

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2. That Condition No. 6 of Board of Appeals Case No. 4403 is herein modified as requested, provided:
 - A. That the gazebo is removed at such time as either the lot is developed or used for some other principal permitted use;
 - B. That the gazebo is removed at such time as the property is sold by the Applicants or the use is no longer required or desired; and
 - C. That appropriate plantings be made around the gazebo, subject to the review and approval of the Harford County Department of Planning and Zoning.
 - D. That the gazebo not be modified or altered in appearance without the approval of the Harford County Board of Appeals.

Date: March 10, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner